IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.1838 OF 1998
WITH
WRIT PETITION NO.1841 OF 1998

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Ms.Kiran Bhagalia, for the Petitioners
Mrs. S.S. Bhende, A.G.P. for Respodnent No.1 and 2.

CORAM : F.I. REBELLO & S.P. KUKDAY,JJ.
DATED : 1st February, 2005
P.C.

. As the issues in both the petitions are common and as the acquisition was for the same project both petitions can be disposed of by common order.

2. In both the petitions the principal contention of the petitioner is that the respondents have failed to comply with the requirement of Section 13(2) of the Maharashtra Project Affected Persons Act, 1986 (hereinafter referred to as the said Act). Under Section 13(2) before publishing the notification under sub-section (1) the Collector has to give public notice inviting objections or suggestions in respect of the lands mentioned therein. Any person interested

in the land in such areas may make, objections or suggestions, if any, to the Collector within 30 days from the date on which such public notice is published in the manner set out therein. Any objection or suggestion received has to be forwarded by the Collector to the State Government. The State Government on considering the report and the objections may pass such order as it deems fit. It is the grievance of the petitioners that the objections filed were not referred by the Collector to the State Government, but on the contrary the Collector proceeded to himself decide and determine the said objections. This, it is pointed out, is clearly contrary to the requirement of Section 13(2) and amounts to failure to exercise jurisdiction by the Collector or wrong exercise of jurisdiction and on that count alone the petition ought to be allowed.

3. At the time of admission of the petition interim stay was granted in terms of prayer clause (c) which was to restrain the respondents not to take any further steps for acquisition of lands as set out therein. Liberty was, however, given to the State Government to follow proper procedure under Section 13 and then to

proceed according to law. It is pointed out on behalf of the petitioner that the project has since been completed. They, however, are not in a position to state whether there was further compliance under Section 13 of the Act. No reply has been filed on behalf of the Respondents.

4. Considering what has been stated above it will be clear that there was been contravention of Section 13(2) of the Act and if that be the case the petition would have to be partly allowed in terms of prayer clause (a) to the extent of the petitioner's land and that too in the event the lands have not been acquired subsequently pursuant to the liberty granted by this Court when it admitted the petition on 17th April, 1998.

5. In the light of that Rule made partly absolute in terms of prayer clause (a) in both the petitions to the extent of the petitioner's land subject to the further condition that if the lands have been acquired thereafter after complying with Section 13 then the same would not be disturbed. If, however, the petitioner's lands are not acquired then to that extent liberty to the respondents to comply with

Section 13 of the Act and then proceed according to law. There shall be no order as to costs.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)